**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

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**F.A.O. No.5491 of 2006**
**Date of Decision:15.12.2006**

**National Insurance Company Ltd., Chandigarh**

**.....Petitioner**

**Vs.**

**Harbans Singh and others**

**.....Respondents**

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL**
**HON'BLE MR. JUSTICE RAJESH BINDAL**

Present:- Mr. P.S.Saini, Advocate for the appellant.

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**ORDER**

This appeal has been preferred by the Insurance Company against award of compensation of Rs.2,06,640/- passed by the Motor Accident Claims Tribunal, Ludhiana (for short, `the Tribunal').

Case of the claimant is that on 12.2.2003 at about 7:45 A.M., the claimant was driving a bus from Chandigarh to Ludhiana and was hit by truck driven by Bachan Singh- deceased resulting in injuries to the claimant including crushing of his right foot which led to its amputation. The claim was contested by the Insurance Company. On pleading of parties, following issues were framed by the Tribunal:-

1. Whether Harbans Singh claimant suffered injuries in motor vehicle accident on 12.2.2003 at about 7.45 A.M. Near Nai Colony Chehla P.S.Samrala due to rash and negligent driving of truck no.PB-08B-6399 by Bachan Singh deceased driver of said truck owned by respondent no.1?OPP
2. Whether the claimant is entitled for compensation, if so what amount and from whom?OPP
3. Whether the claimant is estopped by his act and conduct from filing the claim petition.OPR1.
4. Whether the claimant has no locus standi to file the present claim petition?OPR1.
5. Whether the claim petition is bad for non-joinder and mis-joinder of necessary parties.?OPR1.

6. Whether the driver of vehicle no.PB-08B-6399 was not having a valid driving licence at the time of accident?OPR.2.
7. Whether the offending vehicle was not having valid registration certificate and fitness certificate at their time of accident?OPR2.
8. Whether the claim petition is not maintainable?OPR.3
9. Whether the claimant is not holding a valid and effective driving licence on the date of accident?OPR4.
10. Whether the Bus No.PB-10AK-9637 did not have the valid registration certificate, fitness certificate and route permit at the time of alleged accident?OPR4.
11. Relief."

The Tribunal held that accident took place on account of rash and negligent driving of the both the vehicles; the claimant was entitled to compensation under Section 163A of the Motor Vehicles Act, 1988. In his evidence, PW1, Harbans Singh, injured claimant, stated that he had suffered injuries in the accident and had to undergo a major operation which also led to amputation of his right foot. Medical record had also been referred to. It was found that the injured suffered permanent disability and having regard to the loss of earning, pain and suffering, injured is entitled to compensation.

Learned counsel for the appellant raised two contentions: i) driver was not having a valid licence and ii)that the appellant had insured the truck and not the bus, which was also involved in the accident; remedy of the claimant was against the owner of the bus. In view of the finding recorded that the bus as well as truck both were responsible for the accident, we are unable to accept the submissions. As regards driving licence, we find that Issue No.6 was not pressed by the appellant before the Tribunal. The appellant cannot be allowed to press the same now.

As regards to the plea that claim could be made only against the bus, having regard to the scheme of Section 163A of the Act, which does not require proving of any fault, the owner and driver of the truck which was involved in the accident resulting in injuries to the victim as well as the Insurance Company could not be absolved of the responsibility towards the

liability to pay compensation.

In view of the above, we affirm the finding recorded by the Tribunal.

Accordingly, the appeal is dismissed.

**( ADARSH KUMAR GOEL )**
**JUDGE**

**December 15, 2006** **( RAJESH BINDAL )**
**renu** **JUDGE**